



**W.A.(MD) No.608 of 2019**

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 09.10.2023**

**CORAM:**

**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM  
and  
THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN**

**W.A.(MD) No.608 of 2019  
and  
C.M.P.(MD) No.4963 of 2019**

The Managing Director  
Tamil Nadu State Transport  
Corporation (Kumbakonam  
Division II) Limited  
Periyamilaguparai, Tiruchirapalli

... Appellant

-vs-

1.The Presiding Officer  
Labour Court  
Tiruchirapalli

2.N.Tharik Mohammed

... Respondents

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 04.07.2018, passed in W.P.(MD) No.8849 of 2016, on the file of this Court.

For Appellant : Mr.S.C.Herold Singh

For Respondents : R1 – Labour Court  
Mr.G.M.Xavier for R2



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**J U D G M E N T**

**[Judgment of the Court was made by S.M.SUBRAMANIAM, J.]**

This writ appeal is directed against the order of the learned Single Judge, dated 04.07.2018, passed in W.P.(MD) No.8849 of 2016.

**2.** The appellant is the Managing Director, Tamil Nadu State Transport Corporation (Kumbakonam Division II) Limited, Periyamilaguparai, Tiruchirapalli and the second respondent is the workman

**3.** The second respondent – workman was employed as Junior Tradesman in the appellant – Transport Corporation. He had developed some neural ailments and therefore, he went on leave from 23.12.2002 to 22.01.2003. Admittedly, the second respondent remained absent unauthorizedly, since leave had not been sanctioned by the competent authority.

**4.** Learned counsel appearing for the appellant – Transport Corporation mainly contended that the second respondent was a frequent unauthorized absentee. Earlier, he remained absent unauthorizedly for three



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occasions. Thus, he is a chronic offender committing serious misconduct of unauthorized absence and therefore, the appellant initiated departmental disciplinary proceedings against him. A charge memo was issued to the second respondent. He failed to participate in the process of domestic enquiry. He remained *ex parte* and the Enquiry Officer conducted *ex parte* enquiry and submitted a final report, which was accepted by the Disciplinary Authority, who in turn imposed the punishment of dismissal from service. Challenging the order of dismissal from service, the second respondent raised an industrial dispute in I.D.No.11 of 2008 and the same was allowed by the Labour Court / first respondent. Challenging the award passed by the first respondent, the appellant filed the writ petition. The learned Single Judge, by order dated 04.07.2018, confirmed the award passed by the first respondent and dismissed the writ petition. Challenging the same, the appellant has filed this writ appeal.

5. The main contention of the learned counsel for the appellant is that the second respondent remained absent unauthorizedly for about three occasions and the appellant had taken a lenient view on the earlier occasions and finally initiated disciplinary proceedings and by following the procedures contemplated, imposed the punishment of dismissal from service. Thus, the



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learned Single Judge ought to have considered the fact that the second respondent was a chronic absentee and not attended duty on several occasions, which is a serious misconduct.

**6.** The Labour Court found that there was no defect in the process of domestic enquiry conducted by the Enquiry Officer. However, the Labour Court considered the proportionality of the punishment imposed and accordingly, granted the relief of reinstatement into service with 25% of backwages to the second respondent. The learned Single Judge concurred with the award passed by the Labour Court mainly on the ground that there is no *prima facie* error or reason to interfere with the findings of the Labour Court. The learned Single Judge also considered the issues and found that in respect of the previous unauthorized absents, the appellant imposed certain minor punishments. When punishments were already imposed, the said charges proved cannot be taken into consideration for the purpose of imposing a major penalty in the subsequent disciplinary proceedings.

**7.** Apart from the reasons stated by the Labour Court and the learned Single Judge, if an employee remained absent on medical grounds, it is the duty of the employer to refer the employee to the Medical Board to



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ascertain his fitness. If the employer failed to do so, then a factual inference can be drawn that the employee is fit to join duty. Otherwise the opinion of the Medical Board has also to be considered for the purpose of taking a decision.

**8.** Admittedly, in the present case, the second respondent was not referred to the Medical Board for medical examination. Thus, the genuinity of the neural ailments pleaded by the workman was not verified nor the second respondent was referred to the Medical Board. When the employee is seriously suffered illness and not in a position to attend the duty and remained absent unauthorizedly, his representation may be considered for the purpose of referring him for medical examination by the competent authority. However, the Labour Court formed an opinion that the domestic enquiry was not fair and proper.

**9.** It is brought to our notice that the second respondent was retired from service on 31.12.2018. Both the Labour Court and the learned Single Judge granted the relief of reinstatement into service with 25% of backwages to the second respondent.



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**10.** As far as the case on hand is concerned, the second respondent was suffering from neural ailments and remained absent unauthorizedly and the genuinity of his illness was not considered by the employer during the relevant point of time.

**11.** Learned counsel appearing for the second respondent made a submission that the second respondent had submitted his medical reports to the appellant periodically to establish his ailments and the authorities have not considered the same nor referred the second respondent for medical examination by the competent Medical Board.

**12.** In such circumstances, imposing a major penalty of dismissal from service is disproportionate with reference to the allegations proved against the employee. No doubt, the allegations of unauthorized absence has been proved against the second respondent. But, the punishment of dismissal from service is certainly disproportionate to the gravity of the allegations of unauthorized absence, since the medical reports produced by the second respondent had not been considered by the Disciplinary Authority nor he was referred to the Medical Board for examination. Therefore, considering the overall circumstances, we do not find any reasonable ground to interfere with



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the findings of the learned Single Judge, who confirmed the order passed by the Labour Court.

**13.** Accordingly, this writ appeal is dismissed. The appellant is directed to settle all the retirement benefits due to the second respondent within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

**[S.M.S., J.]**

**[V.L.N., J.]**

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NCC : Yes / No  
Index : Yes / No  
Internet : Yes / No

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To:  
The Presiding Officer,  
Labour Court,  
Tiruchirapalli.



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